

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of)	
)	
Grandfathered Short-spaced)	MM Docket No. 96-120
FM Stations)	RM-7651
)	DOCKET FILE COPY ORIGINAL
Notice of Proposed Rulemaking)	

**RESPONSE TO REPLY COMMENTS
FILED BY THE NATIONAL ASSOCIATION OF BROADCASTERS**

Infinity Broadcasting Corporation ("Infinity"), by its attorneys, respectfully submits this Response to the Reply Comments filed by the National Association of Broadcasters ("NAB") on October 4, 1996 in the above-captioned rulemaking proceeding.

By Order Granting Extension of Time for Filing Comments (DA 96-1222, August 2, 1996), the Chief of the Mass Media Bureau extended the date for the filing of Reply Comments in this proceeding until October 4, 1996 and further ordered that parties may file Comments in response to any Reply Comments submitted by the NAB in this proceeding by November 4, 1996. Infinity submits this Response to address certain of the recommendations put forth by the NAB in its Reply Comments.

In this proceeding the FCC proposes changes to its rules affecting those FM stations whose short-spacing was "grandfathered"

as of November 16, 1964. Infinity is the licensee of forty-three radio stations located in major markets throughout the United States. Thirty-one of these stations are in the FM service and of those FM stations, twelve are identified by the NAB's comments as being in the "grandfathered short-spaced" category of stations that may be directly affected by the outcome of this proceeding, whereas the remaining Infinity stations may be less directly affected by the degree of flexibility ultimately offered to such short-spaced stations.

Current FCC rules restrict the ability of second and third-adjacent pre-1964 grandfathered short-spaced stations to modify their facilities. The Commission proposes to eliminate these restrictions. Specifically, the FCC would simply delete the second and third-adjacent channel spacing requirements for these grandfathered stations, which would therefore eliminate the requirement that increases in the facilities of such stations be based on an agreement between the stations involved setting forth a public interest justification for the proposed increases. In essence, the FCC proposes a return to the pre-1987 regulations regarding second and third-adjacent channel grandfathered short-spacings.

In its Reply Comments the NAB opposes the FCC proposal simply to eliminate second and third-adjacent channel spacing requirements. As an alternative, the NAB suggests the FCC adopt a new regulatory approach that would afford "tailored relief" to pre-

1964 grandfathered, short-spaced FM stations. NAB Reply Comments at 11. This "tailored relief" would require a short-spaced FM licensee seeking to make a facilities modification to support its request with one or more of four additional showings. As set forth in greater detail in the attached Engineering Statement prepared for Infinity by Bernard R. Segal, P.E., these showings would require such an applicant to demonstrate:

- that the modification would result in a net decrease in the number of listeners experiencing interference;
- that the modification would result in a net decrease in the land area of interference;
- that the proposed transmitter site not be close to a major traffic thoroughfare; and
- that the proposed transmitter site be within a defined "buffer zone" around the current transmitter site.

Infinity believes that the addition of these four criteria would be likely to frustrate the very relief which the FCC's proposals would provide for stations within the grandfathered short-spaced category. As indicated above, the FCC's proposals simply reinstate the rules in effect prior to 1987. The proscription adopted at that time restricted the potential number of grandfathered stations able to increase facilities or change transmitter sites by requiring similar public interest showings as well as an agreement between the affected stations.

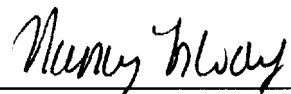
The FCC now recognizes that it is in the public interest to provide increased flexibility for this limited group of stations to make future modifications and station improvements. As Mr. Segal points out in his Statement, the FCC is not proposing an untested rule, but rather a return to prior policy which in practice has been found not to create excessive interference or otherwise to be technically unsound. Thus, imposition of the new technical criteria suggested by the NAB would run counter to the underlying intent of the FCC's proposal — maximum flexibility — and indeed could defeat in many circumstances the specific relief the FCC seeks to offer.

As noted, Infinity is the licensee of several pre-1964, grandfathered short-spaced stations which are directly impacted by the FCC's rules, and also is the licensee of other stations that may only be indirectly impacted. While Infinity acknowledges the NAB's proposal as an effort to balance the interests of all stations, Infinity prefers the FCC's proposal, which represents in Infinity's view a more appropriate balance between the need to provide flexibility to a limited category of FM stations to modify

their facilities against a minimum risk of actual interference to other affected stations.

Respectfully submitted,

INFINITY BROADCASTING
CORPORATION

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November 4, 1996

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ORIGINAL

**ENGINEERING STATEMENT
INFINITY BROADCASTING CORPORATION
NEW YORK, NEW YORK**

The instant engineering statement has been prepared on behalf of Infinity Broadcasting Corporation and is in support of a reply to the Reply Comments of the National Association of Broadcasters (hereafter, NAB) in the MM Docket Number 96-120 proceeding regarding grandfathered short-spaced FM stations.

In the NAB Reply Comments, a suggestion is made that the FCC proposal be revised to include certain other qualifying technical considerations. The FCC proposal, in part, would simply permit grandfathered short-spaced stations to ignore second and third adjacent channel interference when facility changes are proposed. The NAB plan is to include four additional requirements that are spelled out in Subsection IV of the Reply Comments as follows:

- 1) "a demonstration that the modification would result in a net decrease in the number of listeners experiencing interference caused by the station proponent to the signals of other FM stations;

2) that the modification would result in a net decrease in the land area of interference caused by the station proponent to the signals of other FM stations;

3) that the transmitter site shift would not be to a location near a major traffic thoroughfare — a site move that could create massive interference to the mobile radio audience; and/or

4) that the modification of the transmitter site would be to a site within a “buffer zone” around the current transmitter site. This buffer zone would be of a size determined by the Commission — a size perhaps based on a fixed mileage standard for all stations, perhaps based on existing station class, perhaps based on the extent of existing short-spacing or perhaps based on a percentage of the service area radius of the station proponent.”

Infinity believes the added criteria that NAB proposes could frustrate attainment of the relief for many in this category of grandfathered short-spaced

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Engineering Statement
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stations that otherwise would be afforded by the FCC proposal. The FCC proposal merely reinstates the same engineering criteria that were implemented subsequent to the FCC's adoption of a fixed mileage separation allotment plan for FM stations in order to permit facility improvements for nonconforming stations that were blocked from achieving improvements due to the new separation requirements. The elimination of the need to consider second and third adjacent channel short spacings for this limited category of grandfathered stations was found to be in the public interest, and indeed provided the basis for improvements for many of these stations to their current operations. The FCC proposal for this group of stations would afford the maximum flexibility for future changes and return conditions to the same as heretofore prevailed and found not to create excessive interference or otherwise be technically unsound. The imposition of additional technical criteria for proposed changes could defeat the intent of the FCC's proposal for many of these grandfathered stations.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 30, 1996.


Bernard R. Segal, P.E.

CERTIFICATE OF SERVICE

I, Sharon Krantzman, hereby certify that a true and correct copy of the foregoing document was sent by first-class, postage prepaid mail, this 4th day of November, 1996, to the following:

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